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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,027	08/16/2001	Tomoyasu Nakamura	212353US0PCT	1232
22850	7590	04/06/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			WONG, LESLIE A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b> 09/926,027	<b>Applicant(s)</b> NAKAMURA ET AL.	
	<b>Examiner</b> Leslie Wong	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 9,13,17-19,21,22 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9,13,17-19,21,22 and 24-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 13, and 17-19, 21, 22, and 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gudas et al, Cumberland Packing Corp, Catania (EP 0582396), Yusuke (JP 61120690), Fujisaka Takaaki (JP 63167786), Kingsley et al (WO 88/06004), and Kubota et al (US Patent No. 4897272) for the reasons set forth in rejecting the claims in the last Office action. The amendments to the claims are not seen to influence the conclusion of unpatentability previously set forth.

Gudas et al disclose the use of sodium gluconate in chewing gum (see entire document).

Cumberland Packing Corp discloses the use of sodium gluconate in food products (see entire document).

Catania et al disclose the addition of a salt of gluconic acid to an ingestible product (see entire document, especially page 4, lines 16-24).

Yusuke discloses the addition of gluconate to water (see abstract).

Fujisaka Takaaki discloses a vinegar blend, which uses gluconic acid lactone to reduce smell and acidity (see abstract).

Kingsley et al disclose using gluconic acid and its salt to improve the organoleptic properties of seafood (see entire document, especially page 4, first full paragraph).

Kubota et al disclose adding gluconic acid to vinegar (see entire document, especially column 6, lines 24-26, and claim 1).

The claims differ as to the recitation of a flavor other than bitter and the specific foods.

All of the cited references contain flavors other than "bitter" as obvious components. That is, all of the food products contain other flavors such as astringency, pungency, and sourness. For example, vinegar is astringent and sour as is pickled Ume and lemon juice.

All of the prior art teaches the use of nontoxic salts of gluconic acid as a taste modifier.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to add a nontoxic salt of gluconic acid as taught by Gudas et al, Cumberland Packing Corp, Catania, and Yusuke to any orally ingestible product because the use of gluconic acid salts to improve flavor is conventional in the art and the salt is used for no more than its art-recognized function as a taste modifier.

It is noted that the observation of another beneficial result in an old process cannot form the basis of patentability, see *In re Jones* 1941 CD 686.

In the absence of unexpected results, it is not seen how the claimed invention differs from the teachings of the prior art. Applicant's claims are drawn to a combination of known components which produces expected results, see *In re Kerkhoven* 205 USPQ 1069 and *In re Gershon* 152 USPQ 602.

Applicant's arguments filed January 12, 2004 have been fully considered but they are not persuasive.

Applicant argues that the prior art does not teach a material having at least one of an odor and a flavor other than a bitter flavor, and a Markush group of flavors and a Markush group of materials.

All of the prior art teaches the use of gluconic acid salts. Applicant does not contest that gluconic acid salts are well-known in the food art. Gluconic acid salts are taste modifiers. Applicant's claimed flavors and materials are conventional. Certainly, one of skill in the art would use gluconic acid salts in conventional foods to modify taste. Applicant does not provide unexpected results to show anything other than expected results.

All of the claim limitations and arguments have been considered. None of them are seen as serving as basis for patentability. No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1761

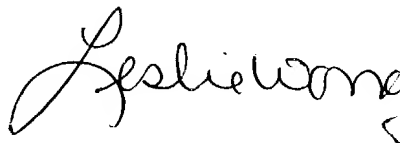
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411.

The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in cursive script that reads "Leslie Wong".

Leslie Wong  
Primary Examiner  
Art Unit 1761

LAW  
April 2, 2004